

Presentation by Justice Ronald B. Robie

Water Education Workshop

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A. Background Through 1967

1. The “Dickey Act” creating the Regional Boards was enacted in 1949. The Boards were expanded in 1959 to seven members.
2. At the time pollution was a serious problem with raw sewage discharges from many municipal facilities.
3. The Sacramento-San Joaquin Delta was suffering from salt water intrusion, in part due to water projects. In stream uses were generally given only limited legal protection.
4. Regulation of water pollution was limited- “water quality” was not an accepted concept -- that is protection of recreational uses, fish and wildlife uses and aesthetics, etc. Thus, in 1963, adoption of “water quality control policy” was added to California’s law and the State Board became the “Water Quality Control Board.” This was a subtle but significant change of direction.
5. In 1965, legislation strengthened the water quality features of state law. At the same time federal law was changed to require states to adopt what we now call “Water Quality Control Standards.”
6. There was an increasing environmental awareness at the state level.

B. Creation of the State Board in 1967

1. Board resulted from legislative hearings and a staff report.
2. The three member, full-time Water Rights Board merged with 14 member, part-time State Water Quality Control Board (9 citizens and 5 State Directors).
3. Objective was two-fold: a) to consider water quality and other environmental factors in water rights administration; and b) to invigorate leadership at the state level as to water quality with a full-time board. For example, the old Water Quality Control Board had never adopted state policy.

C. Enactment of the Porter-Cologne Act in 1969

1. Shortly after the State Board began operations in December 1967, Assemblyman Porter asked it to establish a procedure to completely revise and update the Dickey Act to reflect changing values. "We are indeed in different times and facing different situations than existed in 1949 with regard to protecting our environment," he wrote. The law was considered outmoded and unsatisfactory, particularly as to enforcement.
2. The Board established a broad-based "Study Project" with seven distinguished leaders of water, government, industry and the environment heading subcommittees to work on specific areas of the law. Harvey O. Banks, the State's first Director of Water Resources was the Chair.
3. The Porter-Cologne Act was enacted unanimously. **Among its distinguishing characteristics were:**
 - a. It made significant departures in philosophy from the Dickey Act. Under the Dickey Act "waste disposal" was a beneficial use of water! This was no longer true. A discharger can no longer obtain a vested right to discharge.

- b. A greatly enhanced role for the State Board -- For example basin plans must be approved by the State Board.
- c. A greater emphasis on environmental aspects of water quality -- addition of members with water quality experience to the Regional Boards, bringing total membership to nine members.
- d. The Boards -- State and Regional became the principal state agencies with primary responsibility for coordination and control of water quality.
- e. New tools were given to the boards:
 - i. "Connection bans" to restrict new connections to sewer systems to prevent further water quality problems were authorized.
 - ii. Waste discharge requirements became directly enforceable.
 - iii. The Boards were given authority to prohibit discharges entirely in a given area -- water or land.
- f. The Regional Boards were renamed "California Regional Water Quality Control Boards" to emphasize they were STATE agencies, not local ones. Each member must act on behalf of all people in the public interest.
- g. Tough new conflict of interest provisions for members were added -- more came in the Clean Water Act.
- h. One industry association called it "The Toughest Water Quality Act in the Nation."

D. Major Developments in the 1970's -- A Time of Major Emphasis on the Environment

1. At the Federal Level

- a. Enactment of the *National Environmental Policy Act* of 1969 (NEPA- effective January 1, 1970).
- b. Enactment of the *Clean Air Act* (1970).
- c. Enactment of the *Federal Water Pollution Act Amendments of 1972* (1972), now called the *Clean Water Act*.
- d. Enactment of the *Endangered Species Act*.
- e. Enactment of the *Resource Conservation and Recovery Act* (RCRA- 1975).

2. At the State Level

- a. Enactment of the California Environmental Quality Act (CEQA- 1970).
- b. Enactment of the *California Wild and Scenic Rivers Act* (1972).
- c. California becomes first state delegated to administer the *Clean Water Act* (1972).
- d. The Porter-Cologne Act was amended in 1972 to make it fully compatible with the Clean Water Act.

E. Reflections on the Progress of Water Quality Control

- 1. When Porter-Cologne was enacted, nearly 40 years ago, pollution was rampant.
- 2. The first 20 years of Porter-Cologne and the Clean Water Act cleaned up the worst industrial and municipal pollution. This was made possible, in large measure, with massive federal grants. Also, cost recovery programs were established and municipal systems did not rely on property taxes to fund treatment facilities. Cities like

Sacramento and San Francisco separated their combined sewer systems. Ocean discharges were improved. Major progress was made in land disposal.

3. Water quality became integrated with water rights, especially in the Sacramento-San Joaquin Delta.

4. But the toughest problems remain:

a. Keeping up with the incredible growth of the state and keeping municipalities, particularly from going backward. In many respects the earlier years were the easiest.

b. Getting a handle on non-point source water quality problems. §208 of the original Clean Water Act did not provide a real solution to the problem. The TMDL program is an important step but a lack of federal leadership is holding it back. This is a task where the Regional Boards have significant responsibilities and this program raises new interrelationships with water rights and the duties of the State Board.

c. Storm water discharges are a major current challenge and require great resolve.

d. Water quality problems resulting from agriculture and timber operations are serious and some of the major challenges. Fortunately, the Porter-Cologne Act has stood the test of time. It is flexible and has within it tools not available under the Clean Water Act. You have the ability to use this 40-year old law in ways never contemplated but well within its authority. These emerging issues, particularly, must be faced boldly, creatively and courageously.

e. Delta problems particularly are sorely testing the State Board's ability to effectively regulate water quality and water rights together.

f. Finally, overlain on the entire programs of the State and Regional Board are budget limitations and administrative burdens.

F. Reflections on my Experience as to the Duty of Board Members

1. Board members (State and Regional)

- a. You represent the entire state or region as the case may be -- you do not represent your appointment category or any local area.
- b. Your appointment category means simply that you have knowledge of problems and issues of, for example local government or agriculture.
- c. Everyone must act in the public interest at all times.
- d. You must vigorously carry out your responsibilities under the law.
- e. Expect those regulated to resist, and to object -- this is nothing new. Regulators have never won popularity contests.
- f. Education of the public and interested persons in the responsibilities of the Boards is a constant need. We have to constantly reeducate each new generation. This task is never done.
- g. Good luck!

Sources:

Assembly Interim Committee on Water, *A Proposed Water Resources Control Board For California, A Staff Study*, July 1966.

Ronald B. Robie, *Water Pollution: An Affirmative Response by the California Legislature*, 1 Pacific Law Journal 2 (1970).

California State Water Resources Control Board, *Recommended Changes in Water Quality Control, Final Report of the Study Panel* (1969).